

IN THE SENATE

SENATE BILL NO. 1303

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS; TO PROVIDE LEGISLATIVE FINDINGS; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 3, TITLE 44, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE PROVISIONS RELATING TO VERIFICATION, TO PROHIBIT EMPLOYMENT OF UNAUTHORIZED ALIENS, TO PROVIDE FOR CERTAIN FILINGS, TO PROVIDE PENALTIES, TO PROVIDE THAT NO BUSINESS ENTITY OR EMPLOYER SHALL KNOWINGLY EMPLOY ANY UNAUTHORIZED ALIEN TO PERFORM WORK IN THIS STATE, TO PROVIDE FOR A CONDITION FOR THE AWARD OF CERTAIN CONTRACTS, TO PROVIDE PROVISIONS RELATING TO PARTICIPATION IN FEDERAL WORK AUTHORIZATION PROGRAMS, TO PROVIDE FOR AN AFFIRMATIVE DEFENSE AND FOR AN EXCEPTION, TO PROVIDE PROVISIONS RELATING TO MISCLASSIFICATION OF A WORKER, TO PROVIDE PROVISIONS RELATING TO THE FILING AND INVESTIGATION OF A COMPLAINT, TO PROVIDE FOR CERTAIN POWERS, TO PROVIDE A BURDEN OF PROOF, TO PROVIDE FOR AN INJUNCTION, TO PROVIDE FOR ENFORCING A JUDGMENT AND TO PROVIDE FOR PENALTIES, TO PROVIDE PROVISIONS RELATING TO THE ENFORCEMENT OF LAWS, TO PROVIDE PROVISIONS RELATING TO FILING A COMPLAINT, TO PROVIDE PROVISIONS RELATING TO A CORRECTION OF A VIOLATION, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR CHALLENGE TO ENFORCEMENT, TO PROVIDE FOR DISMISSAL OF A CASE AND A PUBLIC REPORT, TO PROVIDE FOR A DETERMINATION BY THE FEDERAL GOVERNMENT AND FOR A REBUTTABLE PRESUMPTION, TO PROVIDE THAT CERTAIN COMPENSATION SHALL NOT BE ALLOWED AS A BUSINESS EXPENSE DEDUCTION, TO PROVIDE FOR AN EXCEPTION AGAINST CERTAIN CLAIMS, TO PROHIBIT CERTAIN TRAFFICKING AND HARBORING, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR CERTAIN RIGHTS AFFORDED BY FEDERAL LAW, TO PROHIBIT CERTAIN ACTS RELATING TO CONCEALING, HARBORING OR SHIELDING FROM DETECTION ANY ALIEN, TO DEFINE A TERM, TO PROVIDE FOR FELONY HARBORING, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR RULES, TO PROVIDE FOR A DATABASE, TO PROHIBIT MUNICIPAL SANCTUARIES, AND TO PROVIDE FOR REVIEW OF LAWS; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 4, TITLE 44, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR THE ROLE OF THE IDAHO STATE POLICE, TO PROHIBIT THE ADOPTION OF A SANCTUARY POLICY, TO PROVIDE PROVISIONS RELATING TO A COMPLAINT, TO PROVIDE FOR REQUEST FOR AN ATTORNEY GENERAL OPINION, TO PROVIDE PROVISIONS RELATING TO CERTAIN GOVERNMENTAL ENTITIES AND CERTAIN MONEYS, TO PROVIDE FOR CERTAIN WRITTEN NOTICE, TO PROVIDE FOR CERTAIN COOPERATION WITH THE UNITED STATES BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, TO PROVIDE FOR THE COLLECTION AND SHARING OF CERTAIN INFORMATION, TO PROVIDE PROVISIONS RELATING TO SENDING, MAINTAINING OR EXCHANGING CERTAIN INFORMATION, TO PROHIBIT CERTAIN FUNDING OR GRANTS, TO PROVIDE FOR LIMITATION OF APPLICATION OF LAWS, TO PROVIDE PROVISIONS RELATING TO BAIL, TO PROVIDE FOR DETENTION AND NOTIFICATION, TO PROVIDE PROVISIONS RELATING TO THE RESTRICTION OF DRIVER'S LICENSES, TO PROVIDE FOR THE EXCLUSION OF CERTAIN BENEFITS, TO DEFINE A TERM, TO REQUIRE CERTAIN

1 PROOF, TO PROVIDE FOR AN AFFIDAVIT, TO PROVIDE FOR VERIFICATION AND TO
2 PROVIDE AN EXCEPTION; AND PROVIDING AN EFFECTIVE DATE.

3 Be It Enacted by the Legislature of the State of Idaho:

4 SECTION 1. LEGISLATIVE FINDINGS. The Legislature finds that this
5 act complies with the requirements of 8 U.S.C. section 1324a(b)(2),
6 by discouraging the knowing employment of unauthorized aliens through
7 licensing and similar laws. It is the intention of the Legislature to ensure
8 that those who are employed in Idaho are legally authorized to work in this
9 state. The Legislature recognizes that there are industries in Idaho that
10 are in need of temporary and seasonal workers, and that historically these
11 workers have come to the United States from other countries through legal
12 guest worker programs. While the Legislature encourages our congressional
13 delegation to pursue development of a guest worker program to meet the needs
14 of Idaho employers, such a program should not reward those who have already
15 broken our laws or provide any form of amnesty.

16 SECTION 2. That Title 44, Idaho Code, be, and the same is hereby amended
17 by the addition thereto of a NEW CHAPTER, to be known and designated as
18 Chapter 3, Title 44, Idaho Code, and to read as follows:

19 CHAPTER 3
20 EMPLOYMENT OF UNAUTHORIZED ALIENS

21 44-301. SHORT TITLE. This chapter may be cited as the "Employment of
22 Unauthorized Aliens Act."

23 44-302. DEFINITIONS. In this chapter, unless the context otherwise
24 requires:

25 (1) "Agency" means any agency, department, board or commission of this
26 state or a county or city that issues a permit or license for purposes of
27 operating a business in this state.

28 (2) "Business entity" means any person or group of persons performing
29 or engaging in any activity, enterprise, profession, or occupation for
30 gain, benefit, advantage, or livelihood. The term "business entity" shall
31 include, but not be limited to, self-employed individuals, partnerships,
32 corporations, contractors, and subcontractors. The term "business entity"
33 shall include any business entity that possesses a business permit, license,
34 or tax certificate issued by the state, any business entity that is exempt by
35 law from obtaining such a business permit, and any business entity that is
36 operating unlawfully without such a business permit.

37 (3) "Contractor" means a person, employer, or business entity that
38 enters into an agreement to perform any service or work or to provide a
39 certain product in exchange for valuable consideration. This definition
40 shall include, but not be limited to, a general contractor, subcontractor,
41 independent contractor, contract employee, project manager, or a recruiting
42 or staffing entity.

43 (4) "Employee" means any person who performs services or labor for an
44 employer in the state for wages or other remuneration. For the purposes
45 of this chapter, "employee" shall not refer to a person performing casual

1 domestic labor in or around one's personal abode. For the purposes of
 2 this chapter an employer-employee relationship does not exist between a
 3 contractor and the employees of a subcontractor.

4 (5) "Employer" means an individual, corporation, limited liability
 5 company, partnership or other recognized legal entity, including a public
 6 employer, that transacts business in this state, that has a permit or license
 7 issued by an agency in this state and employs one (1) or more individuals
 8 who perform employment in this state. Employer includes the state of Idaho,
 9 any political subdivisions of the state and self-employed persons. Where
 10 there are two (2) or more putative employers, any person or entity taking a
 11 business tax deduction for the employee in question shall be considered an
 12 employer of that person for purposes of this chapter.

13 (6) "Employment" means the act of employing or state of being employed,
 14 engaged, or hired to perform work or service of any kind or character within
 15 the state of Idaho.

16 (7) "E-Verify," means the electronic verification of work
 17 authorization program of the illegal immigration reform and immigrant
 18 responsibility act of 1996, P.L. 104-208, division C, section 403(a);
 19 8 U.S.C. section 1324a, and operated by the United States department
 20 of homeland security or a successor program established by the federal
 21 government.

22 (8) "Federal work authorization program" means any of the electronic
 23 verification of work authorization programs, such as E-Verify, operated by
 24 the United States department of homeland security or an equivalent federal
 25 work authorization program operated by the United States department of
 26 homeland security to verify information of newly hired employees, under the
 27 immigration reform and control act of 1986 (IRCA), P.L. 99-603.

28 (9) "Knowing," "knowingly" or "knowledge" means direct, clear and
 29 express, actual knowledge, as distinguished from constructive knowledge. A
 30 person acts knowingly or with knowledge:

31 (a) With respect to the person's conduct or to attendant circumstances
 32 when the person is aware of the nature of the person's conduct or that
 33 those circumstances exist; or

34 (b) With respect to a result of the person's conduct when the person
 35 is aware that the person's conduct is practically certain to cause that
 36 result.

37 (10) "Knowingly employ an unauthorized alien" means the actions
 38 described in 8 U.S.C. section 1324a. This term shall be used and interpreted
 39 consistently with 8 U.S.C. section 1324a and any applicable federal rules
 40 and regulations.

41 (11) "Legal employment affidavit" means an affidavit that indicates
 42 that an employer does not knowingly employ an unauthorized alien, that an
 43 employer will not direct any other person to employ an unauthorized alien
 44 and that an employer makes a good faith effort to comply with all federal and
 45 state laws regarding the authorization for employment in the United States
 46 of every employee who is employed by the employer in this state.

47 (12) "License" or "permit" means any agency permit, license,
 48 certificate, approval, registration, charter or similar form of
 49 authorization that is required by law and that is issued by any agency for the
 50 purposes of operating a business in this state but does not include a license

1 or permit issued by the department of water resources or the department of
2 environmental quality and does not include any professional license issued
3 pursuant to title 54, Idaho Code, or the Idaho state bar association.

4 (13) "Political subdivision" means any agency or unit of this state
5 which now is, or hereafter shall be, authorized to levy taxes or empowered to
6 cause taxes to be levied.

7 (14) "Public employer" means every department, agency, or
8 instrumentality of the state or political subdivision of the state.

9 (15) "Unauthorized alien" means an alien who does not have the legal
10 right or authorization under federal law, to work in the United States as
11 defined in 8 U.S.C. section 1324a(h) (3).

12 (16) "Work" means any job, task, employment, labor, personal services,
13 or any other activity for which compensation is provided, expected, or
14 due including, but not limited to, all activities conducted by business
15 entities.

16 44-303. VERIFICATION OF EMPLOYMENT ELIGIBILITY -- E-VERIFY --
17 PENALTIES. (1) After January 1, 2011, every employer, after hiring an
18 employee, shall verify the employment eligibility of the employee through
19 E-Verify.

20 (2) An employer shall not employ an alien knowing the alien is an
21 unauthorized alien, as defined in 8 U.S.C. section 1324a(h) (3) with respect
22 to such employment.

23 (3) Every employer doing business in this state who employs five (5)
24 or more employees shall, if applicable, submit federal 1099 miscellaneous
25 forms to the department of revenue. Such forms shall be submitted to the
26 department of revenue within the timelines established for the filing of
27 Idaho 1099 forms.

28 (4) Any employer who intentionally, on five (5) or more occasions,
29 fails to submit information required under the provisions of subsection (3)
30 of this section, shall be fined not more than two hundred dollars (\$200) for
31 each time the employer fails to submit the information on or after the fifth
32 occurrence.

33 44-304. KNOWINGLY EMPLOY UNAUTHORIZED ALIEN -- PROHIBITION. (1) No
34 business entity or employer shall knowingly employ, hire for employment, or
35 continue to employ an unauthorized alien to perform work within the state of
36 Idaho.

37 (2) As a condition for the award of any contract or grant in excess of
38 five thousand dollars (\$5,000) by the state or by any political subdivision
39 of the state to a business entity, or for any business entity receiving
40 a state-administered or subsidized tax credit, tax abatement, or loan
41 from the state, the business entity shall affirm its enrollment and
42 participation in the E-Verify program, by sworn affidavit and provision of
43 documentation, affirm its enrollment and participation in a federal work
44 authorization program with respect to the employees working in connection
45 with the contracted services. Every such business entity shall also sign an
46 affidavit affirming that it does not knowingly employ any person who is an
47 unauthorized alien in connection with the contracted services.

1 (3) All recipients of contracts, and public employers shall enroll and
2 actively participate in a federal work authorization program.

3 (4) An employer may enroll and participate in a federal work
4 authorization program and shall verify the employment eligibility of
5 every employee in the employer's hire whose employment commences after the
6 employer enrolls in a federal work authorization program. The employer
7 shall retain a copy of the dated verification report received from the
8 federal government. Any business entity that participates in such program
9 shall have an affirmative defense that such business entity has not violated
10 the provisions of subsection (1) of this section.

11 (5) A general contractor or subcontractor of any tier shall not be
12 liable under the provisions of this chapter when such general contractor
13 or subcontractor contracts with its direct subcontractor who violates
14 the provisions of subsection (1) of this section, if the contract binding
15 the contractor and subcontractor affirmatively states that the direct
16 subcontractor is not knowingly in violation of the provisions of subsection
17 (1) of this section and shall not henceforth be in such violation and the
18 contractor or subcontractor receives a sworn affidavit under the penalty of
19 perjury attesting to the fact that the direct subcontractor's employees are
20 lawfully present in the United States.

21 44-305. VIOLATION AND INVESTIGATION. (1) An employer knowingly
22 misclassifies a worker if that employer fails to claim the worker as an
23 employee but knows that the worker is an employee.

24 (2) The attorney general may investigate alleged or suspected
25 violations of the provisions of this chapter and, in addition to powers
26 provided for elsewhere in Idaho Code, shall have all powers provided for
27 in this chapter, in connection with any investigation of an alleged or
28 suspected violation of any provision of this chapter. The attorney general
29 may serve and enforce subpoenas related to the enforcement of this chapter.

30 44-306. BURDEN OF PROOF. In any action brought under the provisions of
31 this chapter, the state shall have the burden of proving that the employer
32 misclassified the worker.

33 44-307. ACTION FOR INJUNCTION. Whenever the attorney general has
34 reason to believe that an employer is engaging in any conduct that would be
35 a violation of any provision of this chapter, the attorney general may seek
36 an injunction prohibiting the employer from engaging in such conduct. The
37 attorney general may bring an action for injunctive relief in the court of
38 any county where the alleged violation is occurring or about to occur.

39 44-308. ENFORCING THE JUDGMENT. If a court determines that an employer
40 has knowingly misclassified a worker, the court shall enter a judgment
41 in favor of the state and award penalties in the amount of fifty dollars
42 (\$50.00) per day per misclassified worker up to a maximum of fifty thousand
43 dollars (\$50,000). The attorney general may enter into a consent judgment
44 with any person alleged to have violated any provision of this chapter.

1 44-309. COMPLAINT -- ENFORCEMENT. (1) The attorney general shall
2 enforce the requirements of the provisions of this chapter.

3 (2) An enforcement action shall be initiated by means of a written,
4 signed complaint under penalty of perjury as defined in section 18-5401,
5 Idaho Code, to the attorney general submitted by any state official,
6 business entity, or state resident. A valid complaint shall include an
7 allegation which describes the alleged violator as well as the actions
8 constituting the violation, and the date and location where such actions
9 occurred. A complaint which alleges a violation solely or primarily on the
10 basis of national origin, ethnicity, or race shall be deemed invalid and
11 shall not be enforced.

12 (3) Upon receipt of a valid complaint, the attorney general shall,
13 within fifteen (15) business days, request identity information from the
14 business entity regarding any persons alleged to be unauthorized aliens.
15 Such request shall be made by certified mail. The attorney general shall
16 direct the applicable municipal or county governing body to suspend any
17 applicable license, permit, or exemptions of any business entity which
18 fails, within fifteen (15) business days after receipt of the request, to
19 provide such information.

20 (4) The attorney general, after receiving the requested identity
21 information from the business entity, shall submit identity data required
22 by the federal government to verify, under 8 U.S.C. section 1373, the
23 immigration status of such persons, and shall provide the business entity
24 with written notice of the results of the verification request:

25 (a) If the federal government notifies the attorney general that an
26 employee is authorized to work in the United States, the attorney
27 general shall take no further action on the complaint;

28 (b) If the federal government notifies the attorney general that an
29 employee is not authorized to work in the United States, the attorney
30 general shall proceed on the complaint as provided in subsection (5) of
31 this section;

32 (c) If the federal government notifies the attorney general that it
33 is unable to verify whether an employee is authorized to work in the
34 United States, the attorney general shall take no further action on the
35 complaint until a verification from the federal government concerning
36 the status of the individual is received. If the federal government
37 notifies the attorney general that it is tentatively unable to confirm
38 whether the employee is authorized to work in the United States and
39 that the employee may provide additional information or documentation
40 to the federal government, the attorney general shall so inform the
41 employee and shall allow the employee the time specified by the federal
42 government for providing additional information or documentation.
43 At no point shall any state official attempt to make an independent
44 determination of any alien's legal status without verification from the
45 federal government.

46 (5) (a) If the federal government notifies the attorney general that
47 an employee is not authorized to work in the United States, and the
48 employer of the unauthorized alien participates in a federal work
49 authorization program, there shall be a rebuttable presumption that
50 the employer has met the requirements for an affirmative defense under

1 the provisions of section 44-304(4), Idaho Code, and the employer shall
2 comply with the provisions of subsection (6) of this section.

3 (b) If the federal government notifies the attorney general that an
4 employee is not authorized to work in the United States, the attorney
5 general shall bring a civil action in the county wherein the business
6 entity is located if the attorney general reasonably believes the
7 business entity knowingly violated the provisions of subsection (1) of
8 section 44-304, Idaho Code.

9 (i) If the court finds that a business entity did not knowingly
10 violate the provisions of subsection (1) of section 44-304, Idaho
11 Code, the employer shall have fifteen (15) business days to comply
12 with the provisions of subsection (6)(a) and (6)(b)(i) of this
13 section. If the entity fails to do so, the court shall direct
14 the applicable municipal or county governing body to suspend the
15 business permit, if such exists, and any applicable licenses
16 or exemptions of the entity until the entity complies with the
17 provisions of subsection (6) of this section;

18 (ii) If the court finds that a business entity knowingly violated
19 the provisions of subsection (1) of section 44-304, Idaho
20 Code, the court shall direct the applicable municipal or county
21 governing body to suspend the business permit, if such exists,
22 and any applicable licenses or exemptions of such business entity
23 for fourteen (14) days. Permits, licenses, and exemptions shall
24 be reinstated for entities who comply with the provisions of
25 subsection (6) of this section at the end of the fourteen (14) day
26 period.

27 (6) The correction of a violation with respect to the employment of an
28 unauthorized alien shall include the following actions:

29 (a) (i) The business entity terminates the unauthorized
30 alien's employment. If the business entity attempts to terminate
31 the unauthorized alien's employment and such termination is
32 challenged in a court of the state of Idaho, the fifteen (15)
33 business day period for providing information to the attorney
34 general referenced in subsection (3) of this section shall be
35 tolled while the business entity pursues the termination of the
36 unauthorized alien's employment in such forum; or

37 (ii) The business entity, after acquiring additional
38 information from the employee, requests a secondary or
39 additional verification by the federal government of the
40 employee's authorization, under the procedures of a federal work
41 authorization program. While this verification is pending, the
42 fifteen (15) business day period for providing information to the
43 attorney general referenced in subsection (3) of this section
44 shall be tolled; and

45 (b) A legal representative of the business entity submits, at an office
46 designated by the attorney general, the following:

47 (i) A sworn affidavit stating that the violation has ended that
48 shall include a description of the specific measures and actions
49 taken by the business entity to end the violation, and the name,

1 address, and other adequate identifying information for any
2 unauthorized aliens related to the complaint; and

3 (ii) Documentation acceptable to the attorney general which
4 confirms that the business entity has enrolled in and is
5 participating in a federal work authorization program.

6 (7) The suspension of a business license or licenses under the
7 provisions of subsection (5) of this section shall terminate one (1)
8 business day after a legal representative of the business entity submits
9 the affidavit and other documentation required under the provisions of
10 subsection (6) of this section following any period of restriction required
11 under the provisions of subsection (5) of this section.

12 (8) For an entity that violates the provisions of subsection (1) of
13 section 44-304, Idaho Code, for a second time, the court shall direct the
14 applicable municipal or county governing body to suspend, for one (1)
15 year, the business permit, if such exists, and any applicable license or
16 exemptions of the business entity. For a subsequent violation, the court
17 shall direct the applicable municipal or county governing body to forever
18 suspend the business permit, if such exists, and any applicable license or
19 exemptions of the business entity.

20 (9) In addition to the penalties in subsections (5) and (8) of this
21 section:

22 (a) Upon the first violation of the provisions of subsection (1) of
23 section 44-304, Idaho Code, by any business entity awarded a state
24 contract or grant or receiving a state-administered tax credit, tax
25 abatement, or loan from the state, the business entity shall be deemed
26 in breach of contract and the state may terminate the contract and
27 suspend or debar the business entity from doing business with the state
28 for a period of three (3) years. Upon such termination, the state may
29 withhold up to twenty-five percent (25%) of the total amount due to the
30 business entity;

31 (b) Upon a second or subsequent violation of the provisions of
32 subsection (1) of section 44-304, Idaho Code, by any business entity
33 awarded a state contract or grant or receiving a state-administered
34 tax credit, tax abatement, or loan from the state, the business entity
35 shall be deemed in breach of contract and the state may terminate the
36 contract and permanently suspend or debar the business entity from
37 doing business with the state. Upon such termination, the state may
38 withhold up to twenty-five percent (25%) of the total amount due to the
39 business entity.

40 (10) The provisions of this chapter shall not be construed to deny
41 any procedural mechanisms or legal defenses included in a federal work
42 authorization program.

43 (11) Any business entity subject to a complaint and subsequent
44 enforcement under the provisions of this chapter, or any employee of such a
45 business entity, may challenge the enforcement of this section with respect
46 to such entity or employee in the courts of the state of Idaho.

47 (12) If the court finds that any complaint is frivolous in nature or
48 finds no probable cause to believe that there has been a violation, the court
49 shall dismiss the case. For purposes of this subsection, "frivolous" shall
50 mean a complaint not shown by clear and convincing evidence to be valid.

Any person who submits a frivolous complaint shall be liable for actual, compensatory, and punitive damages to the alleged violator for holding the alleged violator before the public in a false light. If the court finds that a complaint is frivolous or that there is not probable cause to believe there has been a violation, the attorney general shall issue a public report to the complainant and the alleged violator stating with particularity its reasons for dismissal of the complaint. Upon such issuance, the complaint and all materials relating to the complaint shall be a public record as defined in chapter 3, title 9, Idaho Code.

(13) The determination of whether a worker is an unauthorized alien shall be made by the federal government. A determination of such status of an individual by the federal government shall create a rebuttable presumption as to that individual's status in any judicial proceedings brought under this section. The court may take judicial notice of any verification of an individual's status previously provided by the federal government and may request the federal government to provide automated or testimonial verification.

(14) Compensation, whether in money or in kind or in services, knowingly provided to any unauthorized alien shall not be allowed as a business expense deduction from any income or business taxes of this state.

(15) Any business entity which terminates an employee in accordance with this section shall not be liable for any claims made against the business entity under chapter 59, title 67, Idaho Code, related to such termination.

44-310. TRAFFICKING AND HARBORING PROHIBITED -- PENALTIES. (1) It shall be unlawful for any person to knowingly transport, move, or attempt to transport in the state of Idaho any illegal alien who is not lawfully present in the United States, according to the terms of 8 U.S.C. section 1101, et seq., for the purposes of trafficking in violation of chapter 86, title 18, Idaho Code, drug trafficking in violation of chapter 27, title 37, Idaho Code, prostitution in violation of chapter 56, title 18, Idaho Code, or employment.

(2) Any person violating the provisions of subsection (1) of this section shall be guilty of a felony for which the authorized term of imprisonment is a term of not less than one (1) year, or by a fine in an amount not less than one thousand dollars (\$1,000), or by both such fine and imprisonment.

(3) Nothing in this section shall be construed to deny any victim of an offense under the provisions of this chapter of rights afforded by the federal trafficking victims protection act of 2000, P.L. 106-386, as amended.

(4) Any person who conceals, harbors, or shields from detection in any place, including any building or means of transportation, any alien who is in the United States in violation of law commits a crime. "Harboring" means any conduct that tends to substantially facilitate an alien to remain in the United States illegally. The sheltering need not be clandestine, and harboring covers aliens arrested outdoors, as well as in a building. This provision includes harboring an alien who entered the United States legally but has since lost his legal status.

1 (5) An employer can be convicted of the felony of harboring illegal
2 aliens who are his employees if he takes actions in reckless disregard of
3 their illegal status, such as ordering them to obtain false documents,
4 altering records, obstructing INS inspections, or taking other actions that
5 facilitate the alien's illegal employment.

6 (6) Any person who within any twelve (12) month period hires ten (10)
7 or more individuals with actual knowledge that they are illegal aliens or
8 unauthorized workers is guilty of felony harboring. It is also a felony to
9 encourage or induce an alien to come to or reside in the United States knowing
10 or recklessly disregarding the fact that the alien's entry or residence is
11 in violation of the law. This crime applies to any person, rather than just
12 employers of illegal aliens.

13 (7) The penalty for felony harboring is a fine and imprisonment for
14 up to five (5) years. The penalty for felony alien smuggling is a fine
15 and up to ten (10) years imprisonment. Where the crime causes serious
16 bodily injury or places the life of any person in jeopardy, the penalty is
17 a fine and up to twenty (20) years imprisonment. If the criminal smuggling
18 or harboring results in the death of any person, the penalty can include
19 life imprisonment. Convictions for aiding, abetting, or conspiracy to
20 commit alien smuggling or harboring, carry the same penalties. Courts can
21 impose consecutive prison sentences for each alien smuggled or harbored.
22 A court may order a convicted smuggler to pay restitution if the alien
23 smuggled qualifies as a victim under the victim and witness protection
24 act. Conspiracy to commit crimes of sheltering, harboring, or employing
25 illegal aliens is a separate federal offense punishable by a fine of up to ten
26 thousand dollars (\$10,000) or five (5) years imprisonment.

27 44-311. ATTORNEY GENERAL AND ENFORCEMENT. The attorney general shall
28 promulgate rules to implement the provisions of this chapter. Any rule or
29 portion of a rule that is created under the authority provided for in this
30 section shall become effective only if it complies with and is subject to all
31 of the provisions of chapter 52, title 67, Idaho Code.

32 44-312. ATTORNEY GENERAL DATABASE. The attorney general shall
33 maintain a database that documents any business entity whose permit,
34 license, or exemption has been suspended or state contract has been
35 terminated.

36 44-313. SANCTUARY POLICY -- MUNICIPALITY FAILURE TO ACT. If any
37 municipal or county governing body fails to suspend the business permit,
38 if such exists, and applicable licenses or exemptions as directed by the
39 attorney general as a result of a violation of any provision of this chapter
40 within fifteen (15) days after notification by the attorney general, the
41 municipality shall be deemed to have adopted a sanctuary policy as defined
42 in chapter 4, title 44, Idaho Code, and shall be subject to the penalties
43 thereunder.

44 44-314. LEGISLATIVE REVIEW. Should the federal government
45 discontinue or fail to authorize or implement any federal work authorization
46 program, the state legislature shall review this chapter for the purpose

1 of determining whether the sections are no longer applicable and should be
2 repealed.

3 SECTION 3. That Title 44, Idaho Code, be, and the same is hereby amended
4 by the addition thereto of a NEW CHAPTER, to be known and designated as
5 Chapter 4, Title 44, Idaho Code, and to read as follows:

6 CHAPTER 4
7 IDAHO ENFORCEMENT THROUGH ATTRITION ACT

8 44-401. SHORT TITLE. This chapter may be cited as the "Enforcement
9 Through Attrition Act."

10 44-402. DEFINITIONS. In this chapter, unless the context otherwise
11 requires:

12 (1) "Law enforcement officer" means a sheriff or peace officer of a
13 municipality with the duty and power of arrest for violation of the general
14 criminal laws of the state or for violation of ordinances of municipalities.

15 (2) "Municipality" means any county, city or town.

16 (3) "Municipality official" means any elected or appointed official or
17 any law enforcement officer serving the municipality.

18 (4) "Sanctuary policy" means any municipality's order or ordinance,
19 enacted or followed that:

20 (a) Limits or prohibits any municipality official or person employed
21 by the municipality from communicating or cooperating with federal
22 agencies or officials to verify or report the immigration status of any
23 alien within such municipality; or

24 (b) Grants to illegal aliens the right to lawful presence or status
25 within the municipality in violation of federal law.

26 44-403. ROLE OF STATE POLICE. Subject to appropriation, the director
27 of the Idaho state police shall designate that some or all members of
28 the Idaho state police be trained in accordance with a memorandum of
29 understanding between the state of Idaho and the United States department of
30 homeland security concerning the enforcement of federal immigration laws
31 during the course of their normal duties in the state of Idaho, in accordance
32 with 8 U.S.C. section 1357(g). The director shall have the authority to
33 negotiate the terms of such memorandum. The memorandum shall be signed by
34 the director and the governor.

35 44-404. SANCTUARY CITIES. (1) No municipality shall enact or
36 adopt any sanctuary policy. Any municipality that enacts or adopts a
37 sanctuary policy shall be ineligible for any moneys provided through grants
38 administered by any state agency or department until the sanctuary policy is
39 repealed or is no longer in effect. Upon the complaint of any state resident
40 regarding a specific governmental entity, agency, or political subdivision
41 of this state or prior to the provision of funds or awarding of any grants
42 to a governmental entity, agency, or political subdivision of this state,
43 any member of the Idaho legislature may request that the attorney general of
44 the state of Idaho issue an opinion stating whether the governmental entity,

1 agency, or political subdivision has current policies in contravention of
2 this section.

3 (2) The governing body, sheriff, or chief of police of each
4 municipality shall provide each law enforcement officer with written notice
5 of their duty to cooperate with state and federal agencies and officials
6 on matters pertaining to enforcement of state and federal laws governing
7 immigration.

8 (3) Notwithstanding any other provision of law, no government
9 entity, political subdivision, or government official within the state
10 of Idaho shall prohibit, or in any way restrict, any governmental entity
11 or official from communicating or cooperating with the United States
12 bureau of immigration and customs enforcement regarding the citizenship or
13 immigration status, lawful or unlawful, of any individual.

14 (4) Municipalities and political subdivisions may collect and share
15 the identity of persons by the same means the federal bureau of investigation
16 or its successor agency uses in its integrated automated fingerprint
17 identification system or its successor program.

18 (5) No person or agency within the state of Idaho shall prohibit,
19 or in any way restrict, a public employee from doing any of the following
20 with respect to information regarding the immigration status, lawful or
21 unlawful, of any individual:

22 (a) Sending such information to, or requesting or receiving such
23 information from, the United States bureau of immigration and customs
24 enforcement;

25 (b) Maintaining such information; or

26 (c) Exchanging such information with any other federal, state, or local
27 governmental entity.

28 (6) Upon the complaint of any state resident regarding a specific
29 governmental entity, agency, or political subdivision of this state or prior
30 to the provision of funds or awarding of any grants to a governmental entity,
31 agency, or political subdivision of this state, any member of the Idaho
32 legislature may request that the attorney general of the state of Idaho issue
33 an opinion stating whether the governmental entity, agency, or political
34 subdivision has current policies in contravention of the provisions of
35 subsections (3) and (5) of this section.

36 (7) No state agency or department shall provide any funding or award
37 any monetary grants to any governmental entity, agency, or political
38 subdivision determined under the provisions of subsection (6) of this
39 section to have a policy in contravention of the provisions of subsections
40 (3) and (5) of this section until the policy is repealed or no longer in
41 effect.

42 (8) The provisions of subsections (3) and (5) of this section shall
43 not apply to any state or local agency administering one (1) or more federal
44 public benefit programs as such term is defined in 8 U.S.C. section 1612.

45 44-405. FLIGHT RISK. For any Idaho court, in awarding bail, there
46 shall be a presumption that the person is a flight risk for bail, and that
47 releasing the person under any conditions, as provided in chapter 28, title
48 19, Idaho Code, shall not reasonably assure the appearance of the person
49 as required if the court reasonably believes that the person is an alien

1 unlawfully present in the United States. If such presumption exists, the
 2 person shall be committed to jail, until such person provides verification
 3 of his or her lawful presence in the United States to rebut such presumption.
 4 If the person adequately proves his or her lawful presence, the court shall
 5 review the issue of release, as provided for in chapter 28, title 19, Idaho
 6 Code, without regard to previous issues concerning whether the person is
 7 lawfully present in the United States. If the person cannot prove his or her
 8 lawful presence, the person shall continue to be committed to the jail and
 9 remain until discharged by due course of law.

10 44-406. DETENTION AND NOTIFICATION. (1) If verification of the
 11 nationality or lawful immigration status of any person who is charged and
 12 confined to jail for any period of time cannot be made from documents in
 13 the possession of the prisoner or after a reasonable effort on the part of
 14 the arresting agency to determine the nationality or immigration status of
 15 the person so confined, verification shall be made by the arresting agency
 16 within forty-eight (48) hours through a query to the law enforcement support
 17 center (LESC) of the United States department of homeland security or other
 18 office or agency designated for that purpose by the United States department
 19 of homeland security. If it is determined that the prisoner is in the United
 20 States unlawfully, the arresting agency shall notify the United States
 21 department of homeland security.

22 (2) Nothing in this section shall be construed to deny any person bond
 23 or prevent a person from being released from confinement if such person is
 24 otherwise eligible for release.

25 44-407. RESTRICTIONS ON DRIVER'S LICENSES. (1) The Idaho
 26 transportation department shall not issue any driver's license to an illegal
 27 alien nor to any person who cannot prove his or her lawful presence pursuant
 28 to the provisions of this chapter. A driver's license issued to an illegal
 29 alien in another state shall not be honored by the state of Idaho and the
 30 Idaho transportation department for any purpose. The state of Idaho hereby
 31 declares that granting driver's licenses to illegal aliens is repugnant to
 32 the public policy of Idaho and therefor Idaho shall not extend full faith
 33 and credit to out-of-state driver's licenses issued to illegal aliens. As
 34 used in this section, the term "illegal alien" shall mean an alien who is not
 35 lawfully present in the United States, according to the terms of 8 U.S.C.
 36 section 1101, et seq.

37 (2) The written portion of the test required to obtain an Idaho state
 38 driver's license shall only be administered in the English language. No
 39 translators shall be allowed for applicants taking the test.

40 44-408. EXCLUSION OF STATE AND LOCAL BENEFITS. (1) Except for state
 41 or local public benefits that may be offered under 8 U.S.C. 1621(b), no
 42 alien unlawfully present in the United States shall receive any state or
 43 local public benefit, including in-state tuition, state resident tuition
 44 rates and/or fees at public postsecondary institutions. Nothing in this
 45 section shall be construed to prohibit the rendering of emergency medical
 46 care, prenatal care, services offering alternatives to abortion, emergency
 47 assistance, or legal assistance to any person.

1 (2) As used in this section, "public benefit" means any grant,
2 contract or loan provided by an agency of state or local government; or any
3 retirement, welfare, health, postsecondary education tuition or benefits,
4 state grants and scholarships, disability, housing, or food assistance
5 benefit under which payments, assistance, credits, or reduced rates or fees
6 are provided. The unemployment insurance program shall verify the lawful
7 presence of an alien for the purpose of determining eligibility for benefits
8 in accordance with its own procedures.

9 (3) In addition to providing proof of other eligibility requirements,
10 at the time of application for any state or local public benefit, an
11 applicant who is eighteen (18) years of age or older shall provide
12 affirmative proof that the applicant is a citizen or a permanent resident
13 of the United States or is lawfully present in the United States, provided
14 however, that in the case of state grants and scholarships, such proof shall
15 be provided before the applicant receives any state grant or scholarship.
16 Such affirmative proof shall include documentary evidence recognized by
17 the Idaho transportation department when processing an application for a
18 driver's license, an Idaho driver's license, as well as any document issued
19 by the federal government that confirms an alien's lawful presence in the
20 United States. In processing applications for public benefits, an employee
21 of an agency of state or local government shall not inquire about the legal
22 status of a custodial parent or guardian applying for a public benefit on
23 behalf of his or her dependent child who is a citizen or permanent resident
24 of the United States.

25 (4) An applicant who cannot provide the proof required under the
26 provisions of this section at the time of application may alternatively
27 sign an affidavit under oath, attesting to either United States citizenship
28 or classification by the United States as an alien lawfully admitted for
29 permanent residence, in order to receive temporary benefits or a temporary
30 identification document as provided in this section. The affidavit shall be
31 on or consistent with forms prepared by the state or local government agency
32 administering the state or local public benefits and shall include the
33 applicant's social security number or any applicable federal identification
34 number and an explanation of the penalties under state law for obtaining
35 public assistance benefits fraudulently.

36 (5) An applicant who has provided the sworn affidavit required under
37 subsection (4) of this section is eligible to receive temporary public
38 benefits as follows:

39 (a) For ninety (90) days or until such time that it is determined that
40 the applicant is not lawfully present in the United States, whichever is
41 earlier; or

42 (b) Indefinitely if the applicant provides a copy of a completed
43 application for a birth certificate that is pending in Idaho or
44 some other state. An extension granted under this subsection shall
45 terminate upon the applicant's receipt of a birth certificate or a
46 determination that a birth certificate does not exist because the
47 applicant is not a United States citizen.

48 (6) An applicant who is an alien shall not receive any state or local
49 public benefit unless the alien's lawful presence in the United States
50 is first verified by the federal government. State and local agencies

1 administering public benefits in this state shall cooperate with the United
2 States department of homeland security in achieving verification of an
3 alien's lawful presence in the United States in furtherance of this section.
4 The system utilized may include the systematic alien verification for
5 entitlements program operated by the United States department of homeland
6 security.

7 (7) The provisions of this section shall not be construed to require any
8 nonprofit organization organized under the Internal Revenue Code to enforce
9 the provisions of this section, nor does it prohibit such an organization
10 from providing aid.

11 (8) Any agency that administers public benefits shall provide
12 assistance in obtaining appropriate documentation to persons applying
13 for public benefits who sign the affidavit required by the provisions of
14 subsection (4) of this section stating they are eligible for such benefits
15 but lack the documents required under the provisions of subsection (3) of
16 this section.

17 SECTION 4. This act shall be in full force and effect on and after
18 January 1, 2011.